

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE DELGADO,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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ORDER

18 Civ. 11121 (JCM)

Jose Delgado (“Plaintiff”) commenced this action pursuant to 42 U.S.C. § 405(g) challenging the decision of the Commissioner of Social Security (“Commissioner”), who denied Plaintiff’s application for disability insurance benefits, finding him not disabled within the meaning of the Social Security Act. (Docket No. 1). On August 27, 2019, consistent with a stipulation submitted by the parties, the Court remanded the case to the Commissioner for further administrative proceedings. (Docket No. 25).¹ On November 8, 2019, the Court approved a stipulation between the parties, which awarded Plaintiff’s counsel, Daniel A. Osborn, attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, in the amount of \$7,956.00.² (Docket No. 29). On April 29, 2020, an Administrative Law Judge (“ALJ”) issued a favorable decision for Plaintiff. (Osborn Decl.³ ¶ 11).

On June 19, 2020, Plaintiff’s counsel filed the instant motion seeking an award of attorney’s fees in the amount of \$13,991.00 pursuant to 42 U.S.C. § 406(b). (Docket No. 30). Counsel represents that this sum is 25% of the past-due benefits awarded to Plaintiff. (Docket

¹ This action is before the Court for all purposes on consent of the parties, pursuant to 28 U.S.C. § 636(c). (Docket No. 18).

² This amount was subsequently reduced to \$7,408.64. (Docket No. 31 ¶ 10 n.1).

³ Refers to the Declaration of Daniel A. Osborn, dated June 19, 2020. (Docket No. 31).

No. 31 ¶ 13). By letter dated July 14, 2020, the Commissioner informed the Court that he does not object to the amount sought by Plaintiff's counsel as long as the previously received EAJA fees are refunded to the Plaintiff. (Docket No. 32). The Court has reviewed Plaintiff's counsel's declaration, the exhibits annexed thereto, and the memorandum of law submitted in support of the motion, (Docket Nos. 30-31), as well as the Commissioner's letter, (Docket No. 32), and finds that the requested fees are reasonable within the meaning of 42 U.S.C. § 406(b) on the condition that Plaintiff's counsel shall refund the previously awarded EAJA fees of \$7,408.64. Accordingly, the Court grants Plaintiff's counsel's motion and awards attorney's fees pursuant to 42 U.S.C. § 406(b) in the amount of \$13,991.00. Upon receipt of this sum, counsel for Plaintiff is directed to refund \$7,408.64 to Plaintiff.

The Clerk is respectfully requested to enter a supplemental judgment so reflecting and to terminate the pending motion (Docket No. 30).

Dated: July 16, 2020
White Plains, New York

SO ORDERED:

Judith C. McCarthy

JUDITH C. McCARTHY
United States Magistrate Judge